Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 400 (M/B) of 2003

U.P. State Road Transport Corporation
Through its Regional Manager,
Dehradun.

…. **Appellant.**

Versus

1. Smt. Ramkumari, W/O late Sri Chandera Bhan
R/O New Nand Vihar, Kankat,
Doctor Sanjeev Mittal Hospital,
District Saharanpur (U.P.)
2. Vishal, S/O Late Sri Chandera Bhan,
3. Km. Vaishali, D/O Late Sri Chandera Bhan,
All residents of New Nand Vihar, Kankat,
Dr. Sanjeev Hospital, District Saharanpur (U.P.)

….. **Respondents.**

Sri Ashish Joshi, Advocate, learned counsel for appellant.
Sri Lok Pal Singh, Advocate, learned counsel for respondents.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 03, 2004.

(Per Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 20-08-2003 passed in M.A.C. Case No. 82 of 2002, Smt. Rajkumari and others Vs. U.P.S.R.T.C., by Motor Accident Claims Tribunal/ I Addl. District Judge, Hardwar ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.5,94,436/- as compensation, in favour of the claimant-respondents under Section 166 of the Act. Aggrieved, the U.P.S.R.T.C.-appellant has come up in appeal mainly on the ground that the accident in question was not the result of rash and negligent driving of driver of the bus in question; that the accident took place due to mechanical failures of the brakes of the Bus No. UP 07 E 8012 and that the compensation awarded is exorbitant.

Brief facts, giving rise to the present appeal, are that Chandra Bhan ***(the deceased)*** was the conductor of the ill-fated bus; that on 14.5.2001, at about 11.40 p.m. the driver rashly and negligently dashed the bus on the rear of the truck loaded with cement. The deceased sustained grievous injuries and died later-on. It was alleged that the deceases aged 33 years was earning Rs. 4636/- per month. Dependents/legal heirs of the deceased prayed for compensation of Rs. Ten lacs.

O.P.-appellant contested the claim petition on the ground that the driver of the bus involved in the accident tried to stop the bus, but due to failure of brakes, it hit the truck No. UTL 4305 from its while the truck was in the last of the row of vehicles at Mandawar Check Post. The age, income and dependency of the deceased have been disputed. It has been stated that the compensation claimed is excessive.

On the pleadings of the parties, the learned Tribunal has framed following Issues in the case:

1. Whether on 14.5.2001 at about 11.40 p.m., near PS Bhagwanpur Check-post Mandawar, bus no. U.P. 07E-8012 being driven rash and negligently by its driver hit the truck standing there from behind with the result conductor Chandra Bhan sustained grievous injuries and died?

2. Whether the claimants are entitled to get compensation? If so, to what amount and from whom?

In support of their case, the claimants have filed pay-certificate of the deceased, extract of family register, photo copy of the F.I.R., registration certificate of the bus, death certificate, charge-sheet, site plan, post mortem report and driving licence. They have produced two witnesses- P.W. 1 claimant no.1 Smt. Ramkumari and P.W. 2 Brahma Pal Singh. The appellant did not adduce any oral or

documentary evidence in support of its case. After hearing both the parties, the learned Tribunal on Issue No.1 has come to the conclusion that the motor accident resulting into grievous injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the bus involved in the accident. On Issue No.2, the learned Tribunal has held that the deceased was aged 33 years and he was employed as conductor with the appellant. It has also been found that the deceased Chandra Bhan was getting Rs. 4636/- per month as salary, which included certain allowances. Thus, the Tribunal has held that the total annual income of the deceased came to Rs. 51,612/-. After deducting, 1/3rd from it, it has been held that annual loss of dependency came to Rs. 34,408, which was rounded to Rs. 34,000/- per annum. After applying multiplier of 17, total loss of dependency was determined at Rs. 5,84,936/-. In addition, the Tribunal has awarded sum of Rs. 2,000/- towards funeral expenses, sum of Rs. 5,000/- towards loss of consortium and loss of love and affection and sum of Rs. 2,500/- loss of estate, thereby total amount of Rs. 5,94,436/- has been awarded as compensation in favour of the claimant-respondents against the appellant. Accordingly, the claim petition has been decreed as mentioned in the impugned order.

Learned counsel for the appellant challenged the finding of the learned Tribunal and submitted that the accident occurred due to mechanical failure of the brakes and not due to rash and negligent driving by the driver of bus. P.W.2 Brahma pal Singh, a conductor of the Roadways gave ocular account of the accident. This witness a friend of the deceased was also travelling in the bus. He has categorically stated that the driver of the Bus No. UP 07 E-8012 drove it rashly and negligently. Nothing material could be elicited in his cross-examination to indicate that he has not given true account of the accident. There was no reason to discredit the testimony of this witness. The F.I.R. on the basis of which crime no. 91/2001, under Sections 279, 337, 338 and 427 I.P.C. was registered against the driver corroborates the evidence of the witness. There is

nothing to prove that the accident was caused due to mechanical failure of the brakes. No technical examination report of the bus was filed to corroborate the contention of the appellant. The appellant-O.P. could not dare to produce the driver Sanjeev Kumar in the witness box to refute the allegations made against him. Admittedly, bus driver Sanjeev Kumar is alive and his non-production is a strong circumstance against the appellant. On the basis of the material on record, it was rightly held that the accident resulting into grievous injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the appellant's bus. The finding of the learned Tribunal does not warrant interference by this Court.

We have considered the submissions made on behalf of the appellant in regard to quantum of compensation. The deceased was employed as conductor in the Roadways and he was getting Rs. 4636/- per month, in all, as his salary. This amount included house rent allowance, hill allowance and medical allowance to the tune of Rs. 335/-. The learned Tribunal, while determining income of the deceased, has excluded this amount of Rs. 335/-, thereby annual income has been worked out as 12 x Rs. 4,301 = Rs. 51,612/-. As mentioned earlier, 1/3rd from it has been deducted towards personal expenses of the deceased, to determine annual loss of dependency as Rs. 34,408/-. The deceased being in the age group of 30-35 years, multiplier of ***17*** was taken to calculate the compensation, which comes to Rs. 34,408 x 17 = 5,84,936/-. In addition, the learned Tribunal awarded sums of Rs. 2,000/- towards funeral expenses, Rs. 5000/- towards loss of consortium and love and affection and Rs. 2,500/- towards loss of estate. Thus, total compensation Rs. 5,94,430/- was awarded for the death of the deceased. The multiplier of 17 has been properly applied in accordance with Second Schedule of Section 163-A of the Act. No illegality or infirmity was committed by the learned Tribunal in determining the amount of compensation. The learned counsel could not refer to any material

favourable to the contention of the appellant on this score, so as to warrant interference by this Court.

No other point was urged or argued before us in this appeal.

Having considered the entire facts and the circumstances of the case, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal Hardwar, for being paid to the claimants.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP